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Counterclaimant Apple Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

vs.

APPLE INC.,

Defendant, Counterclaimant.

No. 4:20-CV-05640-YGR-TSH

**STIPULATION AND PROPOSED
ORDER RE BREACH OF CONTRACT
COUNTERCLAIM**

Trial Date: May 3, 2021
Time: 8:00 a.m.
Courtroom: 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

1 Pursuant to the Court's Standing Order Re: Pretrial Instructions in Civil Cases,
2 Plaintiff and Counter-defendant Epic Games, Inc. ("Epic"), and Defendant and Counterclaimant
3 Apple Inc. ("Apple"), together, the "Parties", by and through their undersigned counsel, hereby
4 agree and stipulate to the following:

5 1. Epic stipulates and agrees that Apple has proven all elements of its cause of
6 action for breach of Epic's Apple Developer Program License Agreement with Apple (the
7 "DPLA"), the incorporated App Store Review Guidelines, and Schedule 2 to the DPLA. *See*
8 Counterclaims Count I (ECF No. 66 at 56-57).

9 2. This stipulation does not resolve the First and Second (illegal under the
10 antitrust laws), Third (void as against public policy), or Fourth (unconscionability) affirmative
11 defenses asserted by Epic. *See* Answer to Counterclaims (ECF No. 106 at 17).

12 3. If Epic is found liable for breach of contract following resolution by the
13 Court of the affirmative defenses specified in paragraph 2, then (a) Apple would be entitled to
14 recover damages in an amount equal to (i) 30% of the \$12,167,719 in revenue Epic collected from
15 users in the *Fortnite* app on iOS through Epic Direct Payment between August and October 2020,
16 plus (ii) 30% of any such revenue Epic collected from November 1, 2020 through the date of
17 judgment; and (b) Apple would be entitled to a declaration that (i) Apple's termination of the
18 DPLA and Developer Agreement between Epic and Apple was valid, lawful, and enforceable, and
19 (ii) Apple has the contractual right to terminate its DPLA with any or all of Epic's wholly owned
20 subsidiaries, affiliates, and/or other entities under Epic's control at any time and at Apple's sole
21 discretion. *See* Joint Submission Regarding Trial Elements, Legal Framework and Remedies,
22 Appendix A (ECF No. 276-1 at 9).

23 4. This stipulation does not resolve any other cause of action asserted by
24 Apple, including but not limited to its claim for indemnification under the DPLA (Counterclaims
25 Count VII (ECF No. 66 at 63-64), or its claim for unjust enrichment (Counterclaims Count III
26 (ECF No. 66, at 58).

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 Dated: April 22, 2021

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Katherine B. Forrest (*pro hac vice*)

Gary A. Bornstein (*pro hac vice*)

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15 Dated: April 22, 2021

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1 **PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO**
2 **ORDERED.**

3
4 DATED: _____

5 HON. YVONNE GONZALEZ ROGERS
6 United States District Judge
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ECF SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1, the filer of this document hereby attests that the concurrence of the filing of this document has been obtained from the other signatory hereto.

Dated: April 22, 2021

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Richard J. Doren

Richard J. Doren

*Attorney for Defendant and
Counterclaimant Apple Inc.*